

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE ENROLLED ACT No. 405

AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 23-2-2.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. **(a)** Upon the entry of a stop order under section 6 of **this chapter**, the commissioner shall notify the **applicant franchisor**:

- (1)** of ~~that the entry and~~ of the **stop order**;
- (2)** of the reasons ~~therefor~~ **for the stop order**; and
- (3)** that, upon receipt of a written request, the matter will be set down for hearing to commence within fifteen (15) days after receipt of such request, unless the **applicant franchisor** consents to a later date.

(b) If no hearing is requested or none is ordered by the commissioner, the **stop** order is effective until it is modified or vacated by the commissioner.

(c) If a hearing is requested or ordered, the commissioner, after notice and hearing, may modify or vacate the **stop** order.

SECTION 2. IC 23-2-2.5-10.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 10.5. (a)** A person who wants to offer for sale a franchise in Indiana and who is not exempt under sections 3 through 5 of this chapter shall register the franchise by notification to the commissioner on a notification form prescribed



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by the commissioner. The notification shall include the following:

- (1) The name of the franchisor.
- (2) The name or names under which the franchisor intends to do business.
- (3) The franchisor's principal business address.
- (b) The following items shall be filed with the notification:
 - (1) One (1) copy of the disclosure statement required under section 13 of this chapter.
 - (2) The consent to service of process required under section 24 of this chapter, unless consent has previously been filed by the person.
 - (3) The registration fee required under section 43 of this chapter.
- (c) A franchisor may register only one (1) franchise for each notification.
- (d) The registration of a franchise under this section is effective upon the commissioner's receipt of the notification. The notification is effective for one (1) year from the date of the commissioner's receipt of the notification.

(e) During the one (1) year registration period, a person is not required to file with the commissioner any supplemental information, including any amendments to the disclosure statement, unless the commissioner, acting under the commissioner's authority to suspend or revoke a registration under section 14 of this chapter, requests the information.

SECTION 3. IC 23-2-2.5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 11. ~~Applications for Registration~~ **notification forms**, registration renewal ~~statements, forms~~, and amendments thereto, shall be signed and verified by the franchisor.

SECTION 4. IC 23-2-2.5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 12. If the commissioner finds that:

- (1) the ~~applicant~~ **franchisor** has failed to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training, or other items included in the offering; **and**
 - (2) **the escrow or impoundment of franchise fees is necessary and appropriate to protect prospective franchisees;**
- the commissioner may by ~~rule or~~ order require the escrow or impoundment of franchise fees and other funds paid by the franchisee until no later than the time of opening of the business of the franchisee.

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if he finds that such requirement is necessary and appropriate to protect prospective franchisees:

SECTION 5. IC 23-2-2.5-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 13. The application for A registration **notification form filed under section 10.5 of this chapter** shall be accompanied by the fee prescribed in section 43 of this chapter and by ~~three (3) copies~~ **one (1) copy** of a disclosure statement, ~~which shall contain the information set forth in the application for registration, as specified by rule or order of the commissioner, and such additional disclosures as the commissioner may require.~~ The commissioner shall not require disclosure in the disclosure statement of information submitted under subsection (e) (1) of section 10. The disclosure statement shall recite in bold type that registration does not constitute approval, recommendation or endorsement by the commissioner and shall contain such other legends or statements as the commissioner shall by rule or order prescribe. **The disclosure statement shall be in a form prescribed by the commissioner or in a form permitted under 16 CFR 436, as amended.**

SECTION 6. IC 23-2-2.5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14. (a) The commissioner may, without a hearing, issue a stop order denying the effectiveness of or suspending or revoking the effectiveness of a registration if ~~he the commissioner~~ **he the commissioner** finds that ~~it the issuance of the order~~ **the issuance of the order** is in the public interest and **also finds that:**

- (a) ~~that~~ **(1)** there has been a failure to comply with ~~any of the provisions of this chapter or the rules or orders of the commissioner pertaining thereto;~~ **to this chapter;**
- (b) ~~that~~ **(2)** the offer or sale of the franchise would constitute misrepresentation to, or deceit or fraud on, the purchasers or offerees;
- (c) ~~(3)~~ **(3)** that the ~~applicant franchisor~~ **franchisor** has failed to comply with any rule promulgated or order issued pursuant to section 12 ~~of this chapter;~~ **or**
- (d) **(4)** that any person identified in the application has been convicted of an offense referred to in subsection (e) of section 10; or is subject to an order; or has had a civil judgment entered against him as referred to in subsection (e) of section 10; and the involvement of such person in the sale or management of the franchise creates an unreasonable risk to prospective franchisees: **the franchisor, or the franchisor's predecessor, or any of the franchisor's directors, trustees, general partners, chief**

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executives, financial officers, accounting officers, franchise sales officers, or other principal officers, or, if the franchisor is a limited liability company, any member or manager of the franchisor:

(A) during the ten (10) year period immediately preceding the date of registration, has:

(i) been convicted of a felony;
(ii) pleaded nolo contendere to a felony charge; or
(iii) been held liable in a civil action by final judgment; if the felony or civil action involved fraud, embezzlement, misappropriation of property, or the violation of any state or federal statute involving the offer or sale of securities or franchises;

(B) is subject to any currently effective order affecting the franchise resulting from a proceeding or pending action brought by any individual or public agency or department;

(C) is a defendant in any pending criminal or material civil proceeding;

(D) during the ten (10) year period immediately preceding the date of registration, has been the defendant against whom a final judgment was entered in any material civil action; or

(E) is the franchisor or a principal executive officer or general partner of the franchisor and has, during the ten (10) year period immediately preceding the date of registration, reorganized due to insolvency or been adjudicated as a bankrupt.

(b) An order issued under this section based on a finding by the commissioner under subsection (a)(4)(A) must include a description of the charge, violation, or judgment referred to in subsection (a)(4)(A). An order issued under this section based on a finding by the commissioner under subsection (a)(4)(B) must include a copy of the order referred to in subsection (a)(4)(B). An order issued under this section based on a finding by the commissioner under subsection (a)(4)(D) must include a description of the judgment referred to in subsection (a)(4)(D). An order issued under this section based on a finding by the commissioner under subsection (a)(4)(E) must include a description of the insolvency or adjudication referred to in subsection (a)(4)(E).

SECTION 7. IC 23-2-2.5-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 15. (a) Upon the entry

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of a stop order under section 14 **of this chapter**, the commissioner shall notify the ~~applicant~~ **franchisor**:

- (1) ~~of that the entry and~~ **of the stop order**;
- (2) **of the reasons therefor for the stop order**; and
- (3) that, upon receipt of a written request, the matter will be set down for hearing to commence within fifteen (15) days after receipt of such request, unless the ~~applicant~~ **franchisor** consents to a later date.

(b) If no hearing is requested or none is ordered by the commissioner, the **stop** order is effective until it is modified or vacated by the commissioner.

(c) If a hearing is requested or ordered, the commissioner, after notice and hearing, may modify or vacate the **stop** order.

SECTION 8. IC 23-2-2.5-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 17. If no stop order under section 14 **of this chapter** is in effect, registration ~~of the offer by notification~~ takes effect at 12 o'clock noon, ~~of the thirtieth day after the filing of the application for registration or the last amendment thereto,~~ or at such earlier time as the commissioner determines: **upon the commissioner's receipt of the notification form**. A registration by **notification** is effective for a period of one (1) year.

SECTION 9. IC 23-2-2.5-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 18. A registration by **notification** may be renewed by submitting to the commissioner ~~an a~~ **application for registration renewal of the registration form** no later than thirty (30) days prior to the expiration of the registration unless that thirty (30) day period is waived by the commissioner. If no stop order or other order under section 14 **of this chapter** is in effect, registration of the offer is renewed at the time the registration would have expired. A renewal is effective for a period of one (1) year unless the commissioner specified a shorter period.

SECTION 10. IC 23-2-2.5-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 19. ~~The application for renewal of a~~ A registration **renewal form** shall be in the form and **contain the** content prescribed by the commissioner and shall be accompanied by ~~three (3) copies~~ **one (1) copy** of the proposed disclosure statement. Each such registration renewal ~~application form~~ shall be accompanied by the fee prescribed in section 43 of this chapter.

SECTION 11. IC 23-2-2.5-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 22. The commissioner may accept and act upon the opinions, appraisals, or reports of any



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experts which may be presented by ~~an applicant~~ **a franchisor** or any interested party, on any question of fact concerning the franchises proposed to be offered or sold. The commissioner may also have any or all matters concerning those franchises investigated, appraised, passed upon or certified to ~~him~~ **the commissioner** by any experts selected by ~~him~~; **the commissioner**, at the expense of the ~~applicant~~; **franchisor**.

SECTION 12. IC 23-2-2.5-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 23. (a) Neither:

(1) the fact that ~~an application for a registration under this chapter renewal form~~ **has been filed or a registration notification form has been submitted to the commissioner under section 10.5 of this chapter**; nor

(2) the fact that such registration has become effective; constitutes a finding by the commissioner that any document filed under this chapter is true, complete, or not misleading. Neither any such fact nor the fact that an exemption is available for a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, franchise or transaction.

(b) A person may not make or cause to be made to any prospective purchaser or offeree any representation inconsistent with subsection (a). ~~of this section~~.

SECTION 13. IC 23-2-2.5-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 24. ~~Every applicant for registration of an~~ **Before a person may** offer to sell franchises under this chapter, **the person** shall file with the commissioner, in the form that the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state or any successor secretary of state to be the ~~applicant's~~ **person's** attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the ~~applicant~~ **person** or the ~~applicant's~~ **person's** successor, executor, or administrator that arises under this chapter or any rule or order under this chapter after the consent has been filed with the same force as if served personally on the person filing the consent. **A person who has filed a consent with the commissioner for a previous registration or exemption under this chapter is not required to file another consent. The person's previous consent shall remain effective for all subsequent registrations or exemptions filed by the person under this chapter.** Service shall be made in accordance with the Indiana Rules of Civil Procedure.

SECTION 14. IC 23-2-2.5-43 IS AMENDED TO READ AS



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FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 43. (a) All fees and funds of whatever character accruing from the administration of this chapter shall be:

- (1) accounted for by the secretary of state;
- (2) paid into the state treasury monthly; and
- (3) placed in the same account of the state general fund as established by IC 23-2-1-15(c), from which all compensation and expenses shall be paid for the administration of this chapter.

(b) The fee for filing ~~an application for a form for~~ registration by **notification** of the sale of franchises under section ~~9~~ **10.5 of this chapter** is five hundred dollars (\$500).

(c) The fee for filing ~~an application for renewal of~~ a registration **renewal form** under section 18 **of this chapter** is two hundred fifty dollars (\$250).

(d) When ~~an application a~~ **registration notification form or registration renewal form** is denied or withdrawn, the commissioner shall retain one hundred fifty dollars (\$150) of the fee.

(e) The fee for filing a posteffective amendment to a valid registration under section 20 **of this chapter** is fifty dollars (\$50).

SECTION 15. IC 23-2-2.5-48 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 48. ~~(a) All applications,~~ **registration notification forms, registration renewal forms, applications to amend registrations,** reports, and other papers and documents filed with the commissioner under this chapter shall be open to public inspection. The commissioner may ~~in his discretion,~~ publish any information filed with ~~him~~ or obtained by ~~him~~: **the commissioner**. No provision of this chapter authorizes the commissioner or any of ~~his~~ **the commissioner's** assistants, clerks, or deputies to disclose any information withheld from public inspection except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter or to other federal or state regulatory agencies. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of ~~his~~ **the commissioner's** assistants, clerks, or deputies.

~~(a)~~ **(b)** It is unlawful for the commissioner or any of ~~his~~ **the commissioner's** assistants, clerks, or deputies to use for personal benefit any information which is filed with or obtained by the commissioner and which is not then generally available to the public.

~~(b)~~ **(c)** Upon request, and at such reasonable charges as ~~he~~ **the commissioner** prescribes by rule, the commissioner shall furnish to

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any person photostatic or other copies (certified by ~~him~~ **the commissioner** if **certification is** requested) of any document which is retained as a matter of public record, except that ~~he~~ **the commissioner** shall not charge or collect any fee for photostatic or other copies of any document furnished to public officers for use in their official capacity.

~~(c)~~ **(d)** The commissioner may destroy any registration ~~applications~~; **notification forms**, together with the files and folders, as useless or obsolete, four (4) years after the date of registration; provided that a permanent record shall be maintained of any disciplinary action taken by the commissioner and of all orders issued under this chapter.

~~(d)~~ **(e)** Copies on microfilm or in other form which may be retained by the commissioner ~~in his discretion~~ of any records destroyed under this section shall be accepted for all purposes as equivalent to the original when certified by the commissioner.

SECTION 16. IC 23-2-2.5-10 IS REPEALED [EFFECTIVE JULY 1, 2001].

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana

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SEA 405 — Concur+

